

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20090526

Docket: A-470-08

Citation: 2009 FCA 169

**CORAM: LINDEN J.A.
EVANS J.A.
SHARLOW J.A.**

BETWEEN:

SANOFI-AVENTIS CANADA INC.

Appellant

and

**THE MINISTER OF HEALTH,
THE ATTORNEY GENERAL OF CANADA,
and LABORATOIRE RIVA INC.**

Respondents

Heard at Ottawa, Ontario, on May 26, 2009.

Judgment delivered from the Bench at Ottawa, Ontario, on May 26, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on May 26, 2009)

SHARLOW J.A.

[1] This is an appeal of the judgment of Justice Hughes dismissing with costs the application of Sanofi-Aventis Canada Inc. for an order quashing the decision of the Minister of Health to issue a notice of compliance (NOC) to the respondent Laboratoire Riva Inc. for a generic version of 2.5, 5 and 10 mg ramipril capsules (2008 FC 1062).

[2] Despite the able submissions of Mr. Gaikis, we have not been persuaded that Justice Hughes erred in law in deciding as he did. We agree with his decision, substantially for the reasons he gave.

[3] Essentially, the argument for Sanofi is based on the premise that the abbreviated new drug submission (ANDS) originally filed by Pharmascience is so linked to the later prohibition order against Pharmascience that the order necessarily bars an independent generic drug producer, in this case Riva, from relying on the Pharmascience ANDS by using the technique of the “cross-reference” submission. We do not accept this argument.

[4] Nor do we accept the submission of Sanofi that Riva has circumvented the *PM (NOC) Regulations*. Riva’s submission for a NOC, even though it was by way of cross-reference, was a submission of sufficient substance to engage the *PM (NOC) Regulations*, so that Riva was required independently to serve Sanofi with a notice of allegation addressing the listed patents. It did so, and successfully defended the resulting prohibition application commenced by Sanofi.

[5] This appeal will be dismissed with costs.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-470-08

STYLE OF CAUSE: Sanofi-Aventis Canada Inc. v. The
Minister of Health et al

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: May 26, 2009

REASONS FOR JUDGMENT OF THE COURT BY: (LINDEN, EVANS, SHARLOW
J.J.A.)

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

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